



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 2, 2021

BY ECF

The Honorable Loretta A. Preska
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Claimants shall file their response, if any, no later than December 14, 2021.

SO ORDERED.

Loretta A. Preska 12/03/2021

**Re: In Re 650 Fifth Avenue and Related Properties,
08 Civ. 10934 (LAP)**

Dear Judge Preska:

The Government respectfully writes to request the Court reconsider one portion of its November 18, 2021 Order, Dkt. No. 2389. In the Court's Order, the Court ordered that "a privilege log shall be prepared containing information sufficient to demonstrate privilege as to documents withheld on the basis of privilege." The Honorable Katherine B. Forrest previously ordered that the Government was not required to produce a privilege log. As described below, that order was based on the nature of the production of documents in this matter, the nature of the privileges asserted, and the manner in which those privileges—in particular, the law enforcement privilege—are addressed by the Court. Because Claimants' motion was expressly limited in scope and did not ask the Court to decide issues related to privilege, the parties did not bring this law of the case to the Court's attention and, accordingly, the Government respectfully submits that the portion of the Court's order directing the production of a privilege log for documents or information withheld on the basis of privilege in response to Claimants' supplemental statute-of-limitations requests should be reconsidered. *See, e.g., Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (motion for reconsideration "will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.").

I. Prior Litigation Regarding Privilege Log

In this matter, discovery has included, among other things, the production of Federal Bureau of Investigation ("FBI") investigative casefile records from the underlying investigation that led to the filing of the Amended Complaint, as well as electronically stored information ("ESI") related to the underlying investigation maintained by predefined FBI personnel. Prior to production, those records were reviewed by personnel with the FBI's Civil Litigation Unit as well as its Classification Unit to identify classified and privileged materials, which were redacted from